To Promote the Efficient Administration of Justice

JUDICATURE

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The Journal of The American Judicature Society

JUDICATURE is a clearing house of fact and opinion with respect to all phases of the administration of justice and its improvement. Readers are cordially invited to submit articles and news of developments in their localities for publication, which should be preferably not more than 3,000 words.

THE AMERICAN JUDICATURE SOCIETY is a national and international organization of 22,870 lawyers, judges and laymen, in all 50 states, Canada and 43 other countries of the world, founded on July 15, 1913, to promote the efficient administration of justice. Its activities include publishing this journal and other books and literature; conducting meetings, institutes, conferences and seminars; and maintaining an information and consultation service with respect to all aspects of the administration of justice and its improvement. Voting memberships are open to lawyers and judges in this or any country, and associate memberships are open to anyone interested in the betterment of the administration of justice. Dues are $10.00 a year. Persons interested in membership should communicate with one of the directors listed on the inside back cover, or write direct to the Society at 1155 East Sixtieth Street, Chicago, Illinois 60637.

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Journal of The American Judicature Society

Montreal, August 1966

As this issue went to press, orders were coming in from all parts of the country for tickets to the two American Judicature Society events in Montreal, Canada, in August.

As has already been announced, Senator Joseph D. Tydings of Maryland will address the Fifty-third Annual Meeting of the American Judicature Society on Wednesday, August 10, in the Duluth and MacKenzie rooms of the Queen Elizabeth Hotel. The Honorable Ramsey Clark, Deputy Attorney General of the United States, will introduce Senator Tydings. The program will include the annual election of directors, and there will be a brief meeting of the directors for election of officers. There will also be a presentation of the American Judicature Society's Justice Award to a recipient whose name will be announced at that time.

The other Montreal event is a joint luncheon of the American Judicature Society and the National Conference of Bar Presidents, Friday, August 5, in the Marquette Room of the Queen Elizabeth Hotel, at which the Honorable Hugh Scott, United States Senator from Pennsylvania, will speak.

Senator Tydings is chairman and Senator Scott is a member of the Senate Judiciary Subcommittee on Improvements in Judicial Machinery, and both will discuss matters of concern to that subcommittee, and especially with relation to federal judicial personnel.

Tickets for both events will be on sale at the convention headquarters in the Queen Elizabeth and at the door if seats are still available at that time. All members of the American Judicature Society and their guests and friends and all convention registrants, including ladies, will be welcome at both the breakfast and the luncheon.

The American Judicature Society currently has 66 members in Canada.

A New Image for a New Half-Century

A new format, new type, new cover design, a new "lady justice," and even a new name, are combined to usher in the semi-centennial of the Journal of the American Judicature Society. This first issue of the Journal's fiftieth volume comes with the most complete restyling in its half-century of existence.

The theme, of course, is modernization, just as it was in the prior restylings of 1940 and 1953, and probably will be again in the 1970's or 1980's—modernization combined with dignity and, we believe, attractiveness and readability.

The new page layout will emphasize more white space and wider margins, in order that the reader's eye may be more easily guided to the essential materials. We will tend to increase our use of photographs to enhance the written message. Headlines will be set in Monotype Bembo, a classic Roman type face. The new text type, Linotype Caledonia, is a modernized version of the Baskerville we have used for the past ten years. Caledonia was, in fact, adopted in the restyling of 1953 and used about three years until printing operations were transferred from Detroit to Chicago.

The word "Judicature" on the front cover is set in Ernst Schneidler's Bauer Initials, a rarely-seen modern continental type face perfectly suited to the inscriptional quality achieved on the cover.

"Judicature" now has become the actual title of the Journal. This is a one-word summary of the Society's whole field of interest—the administration of justice—for that is what "judicature" means. Since 1953 "Judicature" has stood out in bold letters on the cover, and for many years it has been the word by which the publication has been familiarly known to those who work with and use it. A title all its own will help to give to the Journal an identity and a character of its own as well.

The restyling of this Journal grew out of a creative cooperation between our own staff and the designers at the Printing Department of The University of Chicago where *Judicature* is now printed. This department is one of the Society's neighbors in the huge University complex of which the American Bar Center is itself a part. The excellent facilities of the Neely Printing Company and the services of its vice-president, Joseph K. Roach, will continue to be utilized by the Society for other printing as in the past.

Guidelines for Press and Police

Two notable opinions of the Supreme Court this month emphasized anew the continuing interest and leadership of that tribunal in the administration of justice and its improvement. On June 6 the Court reversed the 1954 judgment of the Court of Common Pleas of Cuyahoga County, Ohio, convicting Dr. Sam Sheppard of Cleveland of the murder of his wife Marilyn, the basis of the reversal being the holding that he was deprived of a fair trial because of the trial judge's failure to protect him sufficiently from "massive, pervasive and prejudicial publicity." One week later the Court held inadmissible as evidence confessions obtained by police questioning in absence of constitutional safeguards which it is said would rule out most confessions obtained under current police practices.

The two rulings are alike in that both were not unanticipated in light of prior Supreme Court pronouncements, both are highly controversial and already have been strongly praised and denounced, and both have as their net effect the further protection of the integrity of the judicial process at the cost of other considerations which many people feel are equally important—the freedom of the press in the one instance and the effectiveness of law enforcement in the other.

In the Sheppard case, the Court's opinion by Mr. Justice Clark reviewed the intense pressure of publicity throughout the pre-arraignment and pre-trial proceedings and the "carnival atmosphere" of the trial itself and concluded that together they amounted to a denial of the due process of law guaranteed in the Fourteenth Amendment of the U.S. Constitution.

The opinion describes the coroner's inquest, which was held in a school gymnasium:

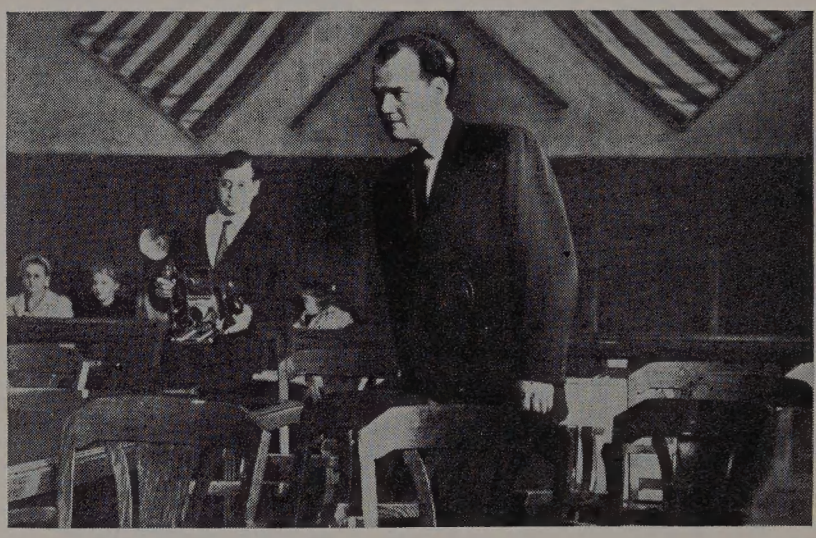
> In the front of the room was a long table occupied by reporters, television and radio personnel and broadcasting equipment. The hearing was broadcast with live microphones placed at the coroner's seat and the witness stand. A swarm of reporters and photographers attended. Sheppard was brought into the room by police who searched him in full view of several hundred spectators. . . . When Sheppard's chief counsel attempted to place some documents in the record he was forcibly ejected from the room by the Coroner, who received cheers, hugs and kisses from ladies in the audience.

The trial itself was similarly described:

> The fact is that bedlam reigned at the courthouse during the trial and newsmen took over practically the entire courtroom hounding most of the participants in the trial, especially Sheppard. At a temporary table within a few feet of the jury box and counsel table sat some 20 reporters staring at Sheppard and taking notes. The erection of a press table for reporters inside the bar is unprecedented. . . . Participants in the trial, including the jury, were forced to run a gauntlet of reporters and photographers each time they entered or left the courtroom.

The privacy of the jury was ignored, and numerous charges and rumors never introduced as evidence were aired in the press and over the air and came to the jury's attention in those ways. The 29-page opinion is chiefly devoted to a graphic description of the mishandling of pre-trial and trial publicity.

The opinion is plainly critical of the news media, adopting the Ohio Supreme Court's characterization of the trial as a "Roman holiday," noting that every court that considered the case except the trial court had deplored the manner in which the news media inflamed and prejudiced the public, and citing comments to the same effect from other organs of the press itself. Nevertheless, the thrust of the opinion is directed toward the handling of the case by Judge Edward Blythin, since deceased, who tried it. The Court was sharply critical of Judge Blythin's protestation that he lacked power to control publicity. It pointed out that "the number of reporters in the courtroom itself could have been limited at the first sign that their presence would disrupt the



Top right: The publicity barrage began with Dr. Sam Sheppard's arrest. This picture was taken as he was being guided toward the county jail from a car.

Center right: In the courtroom one photographer snaps the handsome defendant, Dr. Sheppard, while another waits his turn. A press table was set up inside the bar of the court for the convenience of reporters.

Above: "Tries to Avoid Stain" was the eye-catching caption of this news photo showing Dr. Sheppard leaving the home of his father the day the grand jury indicted him. The "stain" was only wet paint.

Below right: Unkempt and obviously the worse for wear, Dr. Sheppard sits surrounded by microphones during 5½-hour questioning session in the 3-day coroner's inquest. His attorneys were not allowed to participate and one was ejected from the room for attempting to do so.

trial," and "they certainly should not have been placed behind the bar." It noted further that the trial court should have insulated the witnesses and should have "made some effort to control the release of leads, information and gossip to the press by police officers, witnesses and counsel for both sides."

In that connection, the Court referred approvingly to a recent opinion of the Supreme Court of New Jersey (*State* v. *Van Duyne*, 43 N.J. 369, 389 [1964]) in which the Court interpreted Canon 20 of the American Bar Association's Canons of Professional Ethics to prohibit such statements. It also suggested that the trial court could have requested city and county officials to promulgate a regulation with respect to dissemination of information about the case by their employees, citing such regulations issued by the Department of Justice, the City of New York, and other governmental agencies.

The Court declared it the responsibility of appellate courts to see that these standards are adhered to but noted that

> . . . reversals are but palliatives; the cure lies in those remedial measures that will prevent the prejudice at its inception. The courts must take such steps by rule and regulations that will protect their processes from prejudicial outside interference.

The dissent (without opinion) of Mr. Justice Black is a reminder that this case is another in a long series which undertakes to fix guidelines which will make adequate provision on the one hand for the fairness of criminal trials and on the other for the freedom of the press. Only last year, the Court set aside the conviction of Billie Sol Estes on similar but less aggravated grounds. Estes had been granted a change of venue, and the jury was sequestered; still, the handling of publicity of that trial was held to be so prejudicial as to be inherently lacking in due process. (*Estes* v. *Texas*, 381 U.S. 532 [1965]).

In 1941 the Supreme Court set aside a contempt citation against a newspaper which had been sustained by the Supreme Court of California, on the ground that no jury was involved and the judge could be trusted not to be influenced by prejudicial publicity. (*Bridges* v. *California*, 314 U.S. 252 [1941]). The basis of the Sheppard appeal, due process, made it necessary that this reversal be based on the judge's handling of the trial, on the judicial "process" itself. This opinion, along with other recent ones, indicates that in absence of self restraint which the media probably are not capable of enforcing, the time will come when a contempt citation against a newspaper, a radio or television station or a photographer will be upheld, as it nearly was in the Bridges case. There was no contempt in the Sheppard case, for the trial judge permitted and encouraged most of the things that were done.

Newspaper comment on the Sheppard decision was generally in support of it. Robert C. Notson, president of the American Society of Newspaper Editors, did say that it might lead courts to "hide from public knowledge virtually all of the facts of law enforcement and the administration of justice," but even he conceded that the opinion supplies useful guidelines to trial courts and the press. *Chicago's American* said the same thing and added that although the guidelines are strict they will not cripple the public's right to know what goes on in courtrooms.

One quick reaction to the Sheppard case was the decision of Jack Ruby's attorneys not to contest the prosecution's contention that he was sane when he shot and killed Lee Harvey Oswald, assassin of President Kennedy. They felt that a court that would order a new trial on the Sheppard facts could not do less with the extravagantly publicized trial of Ruby in Dallas two years ago.

In appraising the impact of the Sheppard case on the administration of justice, one more or less obscure point should not be overlooked. Mr. Justice Clark's opinion takes note of the fact that it came on for trial just two weeks before the November general election at which the chief prosecutor was a candidate for municipal judge and the presiding judge, Judge Blythin, was a candidate to succeed himself. Under similar circumstances the United States Court of Appeals for the First Circuit had held in 1952 that "if assurance of a fair trial would necessitate that the trial of the case be postponed until after this election, then we think the law required no less than that" (*Delaney* v. *U.S.*, 199 F. 2d. 107, 115 [1952]). It does not appear that any motion for continuance was made in the Sheppard case, and the opinion merely observes that in the light of all this background, the "arrangements made by the judge with the news media" deprived Sheppard of the judicial serenity and calm to which he was entitled. As long as judges are elected in this country, they are bound to be publicity-conscious, and especially just before the election at which their fate is to be decided, and there need be little surprise that a man in Judge Blythin's position went far to accommodate the media upon which, to a major extent, his continuation in office was dependent.

It is easy to look upon "free press" and "fair trial" as adverse interests, and to think of Judge Blythin's policies as favoring "free press" at the expense of "fair trial" and the Supreme Court's reversal as tipping the scales the opposite way. Actually, however, these two basic constitutional rights are so intertwined, so mutually dependent upon each other, that an imbalance in either direction endangers not one but both of them.

Constitutional history of both England and America, since the days of the Star Chamber and before, confirms that "justice cannot survive behind walls of silence."

> A responsible press has always been regarded as the handmaiden of effective judicial administration especially in the criminal field. Its function in this regard is documented by an impressive record of service over several centuries. The press does not simply publish information about trials, but guards against the miscarriage of justice by subjecting the police, prosecutors and judicial processes to extensive public scrutiny and criticism. [Clark, J., in the Sheppard opinion.]

At the same time, the judicial establishment has been consistently solicitous to protect the freedom of the press, from John Peter Zenger down to *Bridges* v. *California*. The press needs the help of the courts to remain free, and the courts need the help of the press to remain fair. In this situation there is no such thing as "leaning over backward" to help either one at the expense of the other. It is in the long-range interest of both press and courts for both to adopt and enforce such rules and standards as will assure that trials are public but that publicity is in no greater measure than needed to assure that the courts are properly doing their job of administering justice to the parties before them.

One little-noticed feature of the Sheppard case was a portent of the Supreme Court's second major decision in June of 1966. That was the pressure that was put on Dr. Sheppard to obtain a confession. The coroner is quoted as having said, "Well, it is evident the doctor did this, so let's go get the confession out of him." Sheppard was interrogated while in the hospital under sedation.

"When Sheppard insisted that his lawyer be present," says the opinion, "the Coroner wrote out a subpoena and served it on him. Sheppard then agreed to questioning without counsel and the subpoena was torn up. The officers questioned him for several hours."

Seven days after Justice Clark delivered the

Sheppard decision, Chief Justice Warren read to a crowded courtroom a 61-page opinion, *Miranda* v. *Arizona, Vignera* v. *New York, Westover* v. *U.S.* and *California* v. *Stewart,* decided June 13, 1966, delivering a long-awaited clarification of the Court's holding in the 1964 case of *Escobedo* v. *Illinois* 378 U.S. 478.

In that case the Court had held that refusal to comply with a suspect's request to see his lawyer during questioning was a denial of the right to assistance of counsel. The decision raised more questions than it answered, and for two years lawyers, judges, law enforcement officers and others have been asking—

—Did it merely recognize an accused's right to see counsel already retained, or did it establish a new right to have counsel at that time?

—If the latter, would it include a right to appointed counsel if the accused is unable to engage counsel for himself?

—Would mere opportunity to consult with the lawyer in advance be sufficient, or must he be present throughout the interrogation, if desired?

—Would statements made in violation of any such expansion of the Escobedo doctrine be inadmissible as evidence?

To all these questions the Supreme Court has now answered yes, and the result is that most of the confessions obtained under current police practices will be outlawed.

The following are excerpts from the Warren opinion:

> At the outset, if a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent.
>
> The right to have counsel present at the interrogation is indispensable to the protection of the Fifth Amendment privilege under the system we delineate today.
>
> . . . not merely a right to consult with counsel prior to questioning, but also to have counsel present during any questioning if the defendant so desires.
>
> If an individual indicates that he wishes the assistance of counsel before any interrogation occurs, the authorities cannot rationally ignore or deny his request on the basis that the individual does not have or cannot afford a retained attorney. The financial ability of the individual has no relationship to the scope of the rights involved here.
>
> . . . it is necessary to warn him not only that he has the right to consult with an attorney, but also that if he is indigent a lawyer will be appointed to represent him.
>
> If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.
>
> If the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the Government to demonstrate that the defendant knowingly and intelligently waived his privilege against self incrimination and his right to retained or appointed counsel.
>
> Whatever the testimony of the authorities as to waiver of rights by an accused, the fact of lengthy interrogation or incommunicado incarceration before a statement is made is strong evidence that the accused did not validly waive his rights.

Justices Harlan, White, Stewart and Clark dissented. Justice Harlan said the new code will markedly decrease the number of confessions:

> To warn the suspect that he may remain silent and remind him that his confession may be used in court are minor obstructions. To require also an express waiver by the suspect and an end to questioning whenever he demurs must heavily handicap questioning. And to suggest or provide counsel for the suspect simply invites the end of the interrogation.

Some opinion around the country sided with the dissenting justices, but the general reaction was characterized by the *New York Times* as mild. On the negative side, Duane R. Nedrud, executive director of the National District Attorneys' Association, said that the decision would "effectively prevent any worthwhile interrogation," and Howard R. Leary, New York police commissioner, said it "will certainly restrict us in our effectiveness."

On the other hand, Washington Police Chief John B. Layton said his Department had been following such procedures since last August, and Chief Justice Warren in his opinion pointed out that they are standard practice in the F.B.I. Police officials in various cities have said the same thing. The *Milwaukee Journal* pointed out that the decision does not create new rights, but merely spells out the full meaning of long acknowledged rights of which the poor and ignorant are unaware but which are regularly relied on by "smart crooks" and professional criminals.

At its May, 1966, meeting, the American Law Institute began study of its Model Code of Pre-Arraignment Procedure, Tentative Draft No. 1, which provides that a station officer must inform an arrested person that he is not obliged to say anything and that anything he says may be used in evidence (Section 4.01(2)(b)), that counsel may have access to him and that counsel is provided for indigent persons if that is the fact (Section 4.01(2)(d)). The draft further provides that officers are forbidden to persist in questioning after the accused has made it clear that he is unwilling to make a statement or wishes to consult counsel first (Section 5.04(b)).

Justice Harlan would have preferred that reforms such as these come about in this way. "Of course," he said, "legislative reform is rarely speedy or unanimous, though this Court has been more patient in the past. But the legislative reforms when they came would have the vast advantage of empirical data and comprehensive study, they would allow experimentation and use of solutions not open to the courts, and they would restore the initiative in criminal law reform to those forums where it truly belongs."

This amounts, after all, only to another statement of the ancient dictum that it is the province of the legislature to make law (*jus dare*) and of the courts only to interpret it (*jus dicere*). The fact remains that he who interprets law actually makes it, and all courts engage in some judicial legislating. Not even Justice Harlan dissented when the Supreme Court in *Gideon* v. *Wainright*, 372 U.S. 335 (1963) overruled *Betts* v. *Brady*, 316 U.S. 455 (1942), although it had been within the power of Congress to accomplish the same result by legislation throughout the previous 20 years.

The *jus dare–jus dicere* formula, in short, is available when a court prefers not to act, but has never been an obstacle to a strong and courageous court with a constitution to enforce and a litigant before it relying on that constitution. The patently legislative character of the *Escobedo* and *Miranda* rules is emphasized by the Supreme Court's June 20 decision not to give them retroactive effect (*Johnson* v. *New Jersey*), and the obviously legislative terminology and tone of the quoted paragraphs. Indeed, this opinion goes about as far in that direction as any judicial opinion, and it has raised questions in the minds of some people because it was written by men who were appointed rather than elected as legislators ought to be.

Experience in the years ahead will vindicate the Supreme Court's holdings in this group of cases, or perhaps it will indeed indicate that it went too far and will have to draw back at one point or another. The Court has again made clear as it did in *Gideon* v. *Wainwright*, in *Mapp* v. *Ohio*, 367 U.S. 343 (1961) and the many cases cited and discussed in the April 1963 Journal honoring the Court for its leadership in promoting the efficient administration of justice, that the proper administration of justice throughout the state and federal court systems is one of its major concerns, and that it intends to continue to maintain its position of leadership in that field.

JUDICIAL ADMINISTRATION In Korea

Will Shafroth

At the request of Chief Justice Cho Chin Man of the Supreme Court of the Republic of Korea, I made a two-month survey of the court system of South Korea in September and October of last year, under the sponsorship of the Asia Foundation. This was the first such survey ever made by a foreigner at the request of the Korean government. Looking back on that experience, I have some strong impressions. The court system is badly in need of modernization and receives inadequate financial support from the government.

The standard of living of the people is low, unemployment is high, and the attitude of the people toward law and the courts is affected by their view that the laws have as their main purpose the control of the government over the people rather than the safeguarding of the rights of the individual.

The failure to use modern business machines and methods is a weak point. The drafting of legal documents, pleadings, depositions, and summaries of testimony is largely done by hand—oftentimes by scriveners—and the use of typewriters is infrequent. There are no verbatim transcripts of testimony in court and no published court decisions, except for selected opinions of the supreme court. Lack of sufficient funds is blamed.

The Japanese occupation of Korea, from 1910 to 1945, resulted in the adoption of codes taken from the German civil law system. There were no juries, and the three-tier system of courts— district courts, high courts (appellate), and the supreme court—followed the Japanese pattern. In 1946 a new constitution was adopted containing "Western" guaranties, safeguarding the rights of the individual and the independence of the judiciary, and establishing the tripartite division of governmental affairs. Subsequently, new codes and a court administration law were adopted, and a new or amended constitution was adopted in 1963.

The appellate court, or "high court" as it is called, reviews both law and fact, and new testimony is regularly introduced on appeal, as well as, on occasion, further testimony from witnesses who have already been heard below, amounting, in effect, to a trial *de novo*. The continuous trial of the common law is rare, except in short cases, and seven or eight continuances after the trial has commenced are not unusual. The judge is not simply an umpire between the contending parties but "a seeker of justice," who guides the trial, may question the witnesses himself, and may ask for further testimony on particular points when this may seem to be necessary in the interests of truth.

Needs of the Judiciary

In my talks with judges and justices, both in Seoul and in the eleven courts visited outside of Seoul, I was impressed with the need for more judges, particularly trial judges, to cope with the rapidly increasing case loads. I found that the salaries of the judges were so inadequate that many of the more experienced members of the judiciary were leaving the bench before reaching the compulsory retirement age of 65 to go into law practice, because good lawyers are making three to five times as much money as the average judge. At the same time, the number of new candidates who are being trained for the legal profession, and therefore also for the bench, has been kept at a minimum by an outmoded bar examination that passes only two out of every one hundred candidates at any single examination. This archaic relic of the Japanese occupation is now undergoing extensive scrutiny as a result of Asia Foundation initiative.

Courthouses are old and not kept up well in many places (but a new courthouse is near-

WILL SHAFROTH, the author, poses against a background of Korean landscape. Mr. Shafroth was deputy director of the Administrative Office of the United States Courts until two years ago. Before beginning his long term of service in that office he was assistant secretary of the American Judicature Society.

ing completion in Seoul), and the number of courtrooms is so small that in the larger cities the amount of work a judge can do is radically curtailed by his inability to have the use of a courtroom for more than one or two days a week. The spaces given to the judges for their offices are far too small. In Seoul, for example, district judges are given not separate offices but desks in rooms with other judges—sometimes as many as 12 in a single room—a rather sad commentary on the prevailing opinion of what work a judge has to do and the dignity of his position. Of course, the inadequate budget for the judiciary plays a part.

Little use of law books is made by the judges, except the codes themselves, because the libraries are very small, the books closely guarded for fear they will not be returned if borrowed, and the published opinions of the district and appellate courts, except the supreme court, non-existent.

A very substantial weakness of judicial administration in Korea lies in the fact that in the majority (or close to it) of cases in the trial court—civil and criminal—there are no lawyers present, except, of course, the prosecutor in criminal cases. This is a great hardship on the judges, who have the burden not only of deciding such cases but also of investigating them and organizing the testimony. This seems to be due to the cost of litigation, the lack of any effective legal aid work and, perhaps to some extent, the failure of the judiciary to require court-appointed lawyers in criminal cases to fulfil their assignments.

No Massive Court Delays

But, in spite of these conditions, there are no massive delays in the courts, such as we find in some of our state courts, the judges are able and devoted, and in general the presiding judges and the chief judges—who have some supervisory powers, as does the chief justice—exercise their authority and direction over the courts in their jurisdiction to keep their dockets up to date.

The troubles of the Korean judicial system stem to a considerable extent from the lack of an adequate system of legal education and a proper bar-admission procedure in Korea. There are only 750 practicing lawyers in a country of 29,000,000 people, and more are needed. On the average, only 64 lawyers a

year have been admitted during the last ten years. In Seoul, a city of over 3,000,000 people, there are only 350 practicing lawyers; in Pusan, the second largest city, with over a million inhabitants, there are only 52 lawyers; and in Taegu, with a population of 800,000, the lawyers number 35. I visited a branch court in Kimchon, a relatively small town, and was told that only one lawyer lived there. I refrained from asking the obvious question of what happened to the defendant in a civil suit when plaintiff had engaged the only lawyer in town.

There are 23 law schools in Korea, but only a small per cent of these is of acceptable caliber. The three-year law school course is devoted largely to non-law subjects, and it is a fact of life that, after the first year, the time of a large portion of the students is chiefly devoted to studying for the bar examination which, on the average, only one out of fifty passes. The waste of talent devoted to this almost impossible aim of passing the examination and the frustration of the 98 per cent who fail are incalculable. These students go into other branches of the government, into lower positions in the court system, into lawyers' offices, or into business.

Korean Judicial Selection System

The method of judicial selection is interesting. Because of the small number of lawyers and the fact that the better practicing lawyers will make from 60,000 to 100,000 won per month ($240–$400) and upward, compared with the 20,000 won ($80) per month for a beginning district judge, it is rare that a good practicing lawyer is willing to make the financial sacrifice entailed in accepting a position on the bench.

The judges are, therefore, for the most part, being appointed from the newly qualified members of the bar. These are young men who, after passing the judicial examination and taking a two-year course at the Graduate School of Law of Seoul University—which includes a year of apprenticeship with judges, prosecutors, and lawyers—have also served three years in the army, usually in the judge advocate's branch. For their first years on the bench they are usually assigned to sit as members, but not as presiding judges, in three-judge trial courts. There is at the present time only one woman lawyer in Korea, and she is a law school dean.

Judges in Korea are appointed for ten-year terms, except the chief justice, who has a six-year term and cannot thereafter serve a consecutive term. Other justices and judges may succeed themselves. There are 13 members of the supreme court, above 60 appellate court judges, and 300 district judges.

The chief justice is recommended to the president of the republic for appointment by a Judicial Recommendation Council, constituted on an *ad hoc* basis every time it serves; this council consists of the chief justice, three justices elected by the supreme court, two lawyers representing the national and local bar associations, the minister of justice, the attorney general, and a law professor nominated by the president. The appointment is made by the president with the consent of the unicameral National Assembly.

The nomination of justices for the supreme court is made by the chief justice and requires the consent of a Judicial Recommendation Council, selected as stated above, for that purpose. Likewise promotions and transfers from one court to another are made by the members of the supreme court on the recommendation of the chief justice. Needless to say, the recommendations of the chief justice are very persuasive with the members of his court. A personnel file for every judge is kept

Explaining the Korean court study project, Mr. Shafroth (extreme right) has the attention of Chief Justice Chin Man Cho (extreme left) and a group of Asia Foundation personnel, including Dr. Hayden Williams (next to Mr. Shafroth), president of the Asia Foundation. The Asia Foundation, which financed the project, is a private organization financed by contributions from America's charitable trusts, corporations, philanthropic societies and individuals, operating in 14 Asian countries to help their people do better the things they want to do and to promote better understanding and closer ties between them and America.

in the Office of Court Administration and is consulted whenever appointments, transfers, or promotions are made.

Other judges are chosen by the supreme court justices, acting as a council. Supreme court justices are appointed by the president, and all other judges by the chief justice. Thus, in the selection of judges, the independence of the judiciary is complete. To an outsider, it would appear that the power of the chief justice and the associate justices in the selection of judges is actually greater than that of our president, who has to get senatorial approval for his appointments.

The recommendations in my report were principally that a review of some of the methods and machinery of judicial administration in the United States be studied for consideration by a judicial council of Korea, to be headed by the chief justice, to determine their utility and practicability in Korea and that the salaries of the judges and the budget of the courts should be radically increased. Actually, the fees taken in by the Judicial Department in 1964 were over 2½ times the size of the judicial budget.

I was in Korea long enough to acquire a real affection for the Korean people and a sympathy for them in their hardships. For the judges and the judicial personnel whom I met, I have admiration, for, in spite of their difficulties and privations, they are doing a good job. Under the strong leadership of the chief justice, with the prospect of rapid economic improvement in sight, I look for great advances to be made.

Judicial Reform for Colorado Courts of Special Jurisdiction

Daniel J. Shannon

Up until a few years ago no one knew much about the operation of the lower court system in Colorado. There was no court administrator, and neither the secretary of state nor the county clerks were aware of the exact number of justices of the peace operating at any one time. Some judges never posted performance bonds after having been elected. Others refused to handle cases after their fee limitation which went up to $7,500 but averaged less than $3,600 had been reached. Because of increasing public concern and pressures from various interested groups throughout the state, a comprehensive study was made by the Legislative Council at the direction of the Colorado General Assembly.[1] The research uncovered many interesting facts and conclusions which eventually led to the reform of Colorado's entire lower court system.[2]

At the time of the study, the only qualifications required for the office of justice of the peace were that the candidate be 21 years old, a qualified elector, and a resident in the county and precinct in which the office was located. Of the judges interviewed, 65 per cent were over 60 years of age and only 1 was under 35 years of age. Half of the justices had at least 4 years' experience, and 30 per cent had more than 10 years experience in the position. Little or no opposition in the general elections was reported, exceptions being those judges serving in the populated areas where the case load was high enough to provide a high income for a part-time position. Of the justices interviewed, many had completed high school and several had taken some college work; however, none had graduated from a school of law.

Although some of the justices had adequate court facilities provided for them in the county courthouse, or town hall, or the municipality in which they resided, the majority held court in their homes or places of business. Justices were located in most communities, and court was usually held 24 hours a day, 7 days a week, although only 7 justices worked full time and 21 were retired.

Records were generally kept on an informal basis. In some counties, judges kept few, if any, records. Of those that were kept, many were inaccurate and none were standardized. According to law, justices' dockets should have been audited along with those of other county officers. Almost half of the justices said that their dockets were audited every six months, but 15 of these had only their criminal dockets audited. Four of the justices said that their books had never been audited, and 25 said that their dockets (7 of these criminal only) were audited once a year or even less.

Procedure was set strictly by statute, yet only about half of the justices were provided with a set of statutes by the commissioners. Full-time clerical assistance was provided for only two justices, and the vast majority had no clerical help of a subsidized type.

A sampling of work loads revealed that approximately 60 per cent of the cases filed were traffic, 29 per cent civil, 7 per cent criminal, and 3 per cent miscellaneous. Of the traffic cases, 70 per cent were handled on guilty pleas and 6.5 per cent of those filed resulted in dis-

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1. Information for this study came from 2 main sources: 7 regional meetings were held in various areas of the state by the committee to which all justices in each area were invited, and a complete docket analysis of the case loads of all justices of the peace in a selected sample of 22 counties covering 4 judicial districts was made. In all, 129 of the state's approximately 275 justices of the peace were contacted either by the committee or the council staff.

2. Several years ago the city and county of Denver established a modern municipal court in which attorney judges acted both as municipal judges and as justices of the peace. Adequate clerical staff and facilities were also provided. Municipal and magistrate courts are not considered state courts and as such were not substantially affected by the judicial reform.

The Jefferson County Hall of Justice located in Golden, Colorado. Table Mountain appears in the background.

missals. Attorneys were present in only 4.5 per cent of the total case load and appeared 4 times more often in civil than criminal cases. Average time between arraignment and trial was a week, with a maximum of 3 months.

Most of the justices indicated that they gave the traffic violator his day in court, but a few indicated that they assumed the alleged violator was guilty or he would never have been brought into court in the first place. These men had jurisdiction over cases with penalties up to one year in jail and a $5,000 fine!

Judicial Structure Before Reform

The supreme court, with 7 justices, presided as the court of last or final resort. The vast majority of its work was the review of cases appealed from courts of record.

The next level was comprised of the district courts of record empowered with original jurisdiction over all civil and criminal matters except probate and juvenile cases. Some of the districts of the state contained a single judge and others up to 10 judges.

Each of Colorado's 63 counties had a county court with jurisdiction over civil cases up to $2,000 or less, misdemeanor cases, exclusive jurisdiction over juvenile and probate matters, and appeals from justice of the peace courts (*de novo*). In each of the 63 counties, a number of justice of the peace precincts were established (from 1 to 12) with at least 2 judges presiding in each precinct .

The justice court was not a court of record, and the justices of the peace had jurisdiction to handle misdemeanor cases (including traffic), civil matters up to $300, replevin actions, and eviction cases. Any appeals from the justice court were certified to the county court on a trial *de novo* basis.

Consolidated Justice Court System

In 1958, a significant step was taken by the county commissioners of Jefferson County to improve the justice court system. Pursuant to statutory authority, they reduced the number of justice precincts from 4 to 1 and the number of justices of the peace from 8 to 2 and empowered them to consolidate justice court operations. In 1959, 2 attorneys were elected to the office of justice of the peace. The county provided courtrooms, a clerk's office, and witness and jury rooms. A staff of 4 clerks was later increased to 8 to handle the case load.

The new judges formulated a set of rules of procedure to modernize and make uniform the handling of these cases. The courtrooms were located in the county seat of Golden, Colorado, and during the first year of operation over 8,000 criminal and civil cases were filed. Rules of evidence were strictly adhered to, the district attorney's office provided deputies for the prosecution of traffic and criminal cases, and the trials were conducted in a formal atmosphere, complete with judicial robes, imparting respect for the court and the law. Appeals diminished by three-fourths.

The judges conducted court during regular courthouse hours and established bail procedures under the supervision of the clerk of the court to handle after-court-hour bonds.

A streamlined jury-selection system was established, replacing the archaic system of the constable's picking jurors from the street in order to serve in justice court cases. A bookkeeping system was inaugurated to insure the proper receipts and disbursements of the court; in its first year of operation the funds totaled over $100,000.

Judicial Reform Amendment

The successful operation of the Denver Municipal and Jefferson County Justice Courts showed the way to eliminate the obvious abuses in many justice of the peace courts. Again the Colorado Legislative Council was called upon to draft a judicial reform amendment for the general assembly, which in turn

The typical county court courtroom section, except spectators' portion.

was referred to the people in November of 1962. Most people recognized that the clear intent of the amendment was to upgrade the judicial system as well as to provide for an integrated bench, and the amendment was approved by a substantial majority.

The material parts of the amendment are:

1. The jurisdiction of the supreme court remains unchanged, but justices can be increased to 9 upon request of the court and upon ratification of the general assembly.

2. District courts of the state have original jurisdiction as courts of record over all criminal and civil matters, including probate and juvenile cases. All district judges are required to be full-time judges and must be admitted to the bar for at least 5 years. A probate court was created for the city and county of Denver, and the general assembly has authority to establish other minor courts.

3. The offices of justice of the peace and of constable were abolished. New county courts replaced the justice courts. Each county is to have a court with one or more county judges as might be provided by law. The county court jurisdiction is set by statute, except that felonies and title-dispute matters are specifically prohibited as being assigned to the county court jurisdiction.

The Colorado Legislative Council and Legislative Council Committee drafted a series of bills to implement the amendment which were submitted to the general assembly and, with some minor variations, passed into law.

The new county courts were made courts of record and limited to jurisdiction of $500 in civil cases. They were empowered to handle replevin actions, actions involving the possession of realty (but not title disputes), misdemeanors, peace bonds, restraining orders, and preliminary examination cases in felony matters. Appeals based upon the record made in the trial court were to be lodged with the district court (superior court in Denver) for appellate review. An automatic trial *de novo* was abolished. County judges could act as referees in district court matters and juvenile and mental-health court cases. County judges are permitted to act as district judges if they have the qualifications of a district judge.

A simplified procedure was established for the handling of misdemeanor and civil cases. The counties were graded into four classes—A, B, C, and D. In counties of Class A and B (population over 25,000), the county judge must be an attorney and devote full time to court duties. In Class C counties (population from 10,000 to 25,000), the judge must be an attorney but may practice law in courts other than the county court. In Class D (population 10,000 or below), the judge need not be an attorney but must be a high-school graduate and attend a training seminar before taking office.[3] Salaries based on the classification of the county, from $1,200 to $12,000 annually, replaced the fee system.

Pursuant to statutory and constitutional authority, the Supreme Court of the State of Colorado established rules of civil and criminal procedure for the county courts. Statistics are reportable semiannually to the judicial administrator, who serves all county and district courts, and county court records are audited by the state and by the county.

Jefferson County Court

The Jefferson County Court, relying upon the experiences of the consolidated justice court, converted easily into the new county court system. Three attorney judges were elected to 4-year terms. As the result of the

3. Colorado population figures per 1960 census reveals that there are extreme population variations from county to county; e.g., Denver County, 493,887; Hinsdale County, 208. Over a dozen counties do not possess a resident attorney.

court's becoming a court of record and an anticipated increase in case load, the number of clerical personnel was increased to 17, with a chief clerk to supervise the clerical operation. The case load of the Jefferson County Court totaled 10,454 during the first 11½ months of operation. The transition from a court of non-record to a court of record further reduced appeals, and it was noted that litigants and attorneys became aware of the fact that only one trial would likely be held and accordingly they were better prepared for trial.

Of the 10,474 cases filed with the court in 1965, 9,053 were criminal and 1,421 were civil cases. As of December 31, 1965, a total of 1,722 cases was pending in the county court, and of this number only 351 represented cases awaiting trial, 351 represented warrants outstanding, and the other 1,020 were pending arraignments and miscellaneous matters of course. Over the 12-month period, 1,262 criminal cases were tried by court and 372 by jury; 401 civil cases went to trial to the court or jury. From the total case load enumerated above, only 15 appeals were lodged with the county court and were referred to the district court for review.

For the year 1965, a budget of approximately $135,000 was allocated to the Jefferson County Court. The bulk of the budgetary amount was for salaries, with the remainder for supplies, equipment, and witness and professional fees. Total receipts from the operation amounted to $187,000.

In October, 1965, a new hall of justice to house county and district courts was dedicated for the county of Jefferson. With facilities surpassed by few courts in the western states, the county court has 4 courtrooms, each seating approximately 70 spectators with elaborate judges' benches, counsel tables, and jury boxes with places for 14 jurors. Each of the three divisions of the court is provided with judges' chambers, division clerk's room, a court reporter's office, and a judicial hearing room. The central clerk's office is spacious and provides room for 7 clerks and a separate office for the chief clerk. In addition to storage space, the courts have two rooms which are utilized by the court's probation department and district attorney's office. There are two fully equipped jury rooms and two prisoner rooms and a courtroom complex for heavy arraignment sessions.

A number of innovations have been inaugurated by the Jefferson County Court. For example, the court has available and frequently utilizes a complete professional probation department which serves both the district and county courts of Jefferson County. The county judges have appointed a probation officer and have assigned one of the deputy clerks to act as his clerical assistant. In some cases where the services of the formal probation department are not desired, the court's probation officer oversees the supervision of the traffic violators or misdemeanants, especially the younger ones, without the inconvenience and expense of formal probation.

The county jail list is scrutinized daily, and with the co-operation of the district attorney's office those defendants who have not yet been formally charged are brought before the court and advised of their constitutional rights. The court has undertaken a bonding system under the supervision of a night clerk wherein personal recognizance and surety bonds, as well as cash and property bonds, have been utilized to a great extent. Those defendants who are incarcerated and are unable to make bond before trial are given first priority on the court's calendar. Oftentimes other cases are reset in order to provide an early and a speedy hearing for those in jail awaiting disposition of their case.

The court is exploring the possibility of

assigning defendants on probation to lay probation officers to work with them on a group-therapy basis and to assist the court in its handling of chronic offenders whose basic problem lies in the addiction to drugs and alcohol or in family or emotional problems.

Denver County Court

The city and county of Denver is now served by the largest county court in the state, with 10 separate divisions. The judicial reform amendment caused minimal changes in its operation since many improvements were already adopted. All 10 full-time judges are attorneys, appointed for 4-year terms by a nonpartisan selection committee.

The case load of the court during 1965 is very impressive. A total of 133,765 cases was filed. Of these cases, 15,636 were civil; 93,868, traffic ordinances;[4] 4,362, state criminal; and 21,464 ordinances other than traffic. Out of that tremendous total, 128,677 were terminated during the year, including the pending matters at both the beginning and end of the year; 17,840 cases were awaiting trial, arraignment, or were failures to appear as of December 31. Appeals perfected and certified to the superior court were 160, or a percentage of $\frac{1}{10}$ of 1 per cent of the total matters terminated during the year!

The new system has been greeted with sincere approval by the general public, the press, and the state's various bar associations. Obviously, the transition from a system involving 275 part-time justices of the peace to 89 county judges, with consequent changes in the jurisdiction and procedures, necessitated a transitional period in order to reach a state of efficient operation. After a year's experience, the vast majority of the county courts have

This view of the interior of the Jefferson County Hall of Justice reveals the open balconies of the four courtroom levels.

4. Of this number 55,660 were disposed of by arraignment courts and a violations bureau wherein a court appearance by the defendant is waived.

been able to cope with the major problems of operation, records, scheduling, and procedures; most all are extremely current in the time lapse between arraignment and trial. In smaller counties, a party requesting trial to the court or jury may usually obtain a date within 30 days and in the larger counties within 90 days. Attorney appearances in county courts have greatly increased, and most courts require a deputy district attorney to prosecute all traffic and criminal cases.

Utilizing the system previously adopted by the Jefferson County justice courts, most county courts have adopted a modernized jury-selection system.

Results of the New Court System

State-wide, most of the county judges have been able to utilize the facilities previously provided by the commissioners for the county courts. The larger counties in the state were faced with a situation of having inadequate room for the increased work load of the county court, and most of them either rented or built new buildings to house the court operation. The rural areas of the state seem well pleased with their new county court system as compared to the former justice courts.

The jurisdiction of the new county courts, although about the same as the justice of the peace courts, was extended to create courts of record with state-wide jurisdiction. Vast judicial manpower has been added to cope with mounting case loads and backlogs. For the first time in the state's history, most of the lower court judges were provided clerical assistance. The consequence has been that most judges have been relieved of the performance of many ministerial acts, thus allowing them more time to devote to judicial responsibilities.

The judicial administrator of the state has been of invaluable assistance in co-ordinating judicial activities, in assigning judges from county to county as the need arises, and in the compilation of court statistics to enable the proper administration of problem areas of the courts. His office has prepared a county court manual for both judges and clerks. The undesirable fee system has been completely eliminated and salaries are paid to all judges, based upon the population and, consequently, the case load of the county in which the judge serves.

The new system has brought about a substantial improvement in the qualifications of those sitting as lower court judges. Whereas, in 1964, approximately 95 per cent of the state lower court cases were handled by non-attorney judges, under the new system over 94 per cent of the state cases were tried by attorney judges.

Less-accessible court locations and the lack of 24-hour court hearings have not constituted major stumbling blocks to the effectiveness of the lower court system but, on the contrary, have enhanced the dignity of its proceedings and improved the efficiency of its operations.

Appeals from the lower courts to the higher courts have been drastically reduced, and the taxpayer has realized the consequent savings, as compared with the expensive trial *de novo* system in effect previously.

Many of the new courts are adopting new and successful arraignment and trial procedures and flexible modes of corrective penalization. Rehabilitation and probation innovations have been adopted with great success. A strong effort is being made to standardize and make uniform the forms and procedures in all parts of the state.

Colorado has taken a substantial step forward in the fair administration of the law in its courts of limited jurisdiction and away from "roadside courts" and "basement justice."

Lawyer Attitudes

TOWARD LAW AND PROCEDURAL REFORM

Charles W. Joiner

Bar associations typically have as one of their standing goals the appraisal and reform of the practice and procedure in the courts.[1] Lawyers have recognized that they must assume this task largely because they are the ones who use the judicial machinery. This task is usually delegated to standing procedural committees of the bar and to special *ad hoc* committees or conferences[2] aimed at improving the administration of justice. The work of these committees and conferences leads me to observe that the attitude of the would-be procedure-appraiser or law-reformer is probably as important as any other single fact in meeting the bar's obligation.

Committees and conferences can succeed only if all participants develop certain attitudes pertaining to the problems presented. The major problem will not be that of finding the shortcomings of the system or ascertaining the complaints against it but the development of the appropriate attitude and approach to make the analysis. It is not enough to overcome "committee conservatism" or "group groping" with "individual incisiveness" or "personal positiveness." More is needed. I suggest that three attitudes of approach are needed for all committee or conference members as individuals, if they are really to succeed in appraising civil practice or in pointing procedural rules more in the direction of justice.

1. The first of these attitudes has to do with the point of view. In discussions about the values of specific procedures in appraising practice, it is imperative that each problem be approached from the point of view of the litigant, or the public, and *not* the point of view of the lawyer or the judge. I know that most lawyers agree on this in the abstract, but most of us also start to think, "What will this do to my practice?"

The practice of law is a distinguished profession, and it is a monopoly. Lawyers set the standards for new lawyers and determine who shall be lawyers. Lawyers (judges) make the procedural rules. The major check on lawyers is their sense of professional responsibility. In this context, professional responsibility means doing things that are good for the public and not just for lawyers.

Bar leaders who sit on committees or gather to improve the law or to appraise practice must, above all others, approach problems from this point of view. If they do not approach the problem from the point of view of the public, how can they expect the garden-variety lawyer engaged in beating out a living to do so? It is important that all would-be procedural appraisers or reformers keep in mind the question "Is what is being suggested really in the total interest of the litigants or the public or is it simply for the convenience of the lawyers or the judge?"

For example, the subject of continuances and their abuse might be considered by such a committee. "Is our procedure designed for the convenience of the court and counsel rather than for a speedy determination on behalf of the litigant?" is the proper question.

The different possible results from different points of view become apparent in many pro-

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1. American Bar Association Constitution, Art. 1:

"Its objects shall be . . . to promote the administration of justice . . . to apply its knowledge and experience in the field of the law to the promotion of the public good."

By-Laws, Art. 10, § 7:

"(*m*) Federal Legislation. This Committee shall . . . advise and aid Sections and Committees in the pronouncement or presentation of the position of the Association with respect to any proposed or pending legislation before the Congress of the United States."

"(*o*) Jurisprudence and Law Reform. This Committee shall have jurisdiction of all questions in the field of the jurisdiction and procedure in the federal courts, including reforms of the substantive law. . . ."

"(*ee*) State Legislation. . . . This Committee shall endeavor to secure the enactment in their respective states of legislation approved by the Association. . . ."

2. The Conference of the Illinois Bar Association on "Civil Practice as a Means toward Justice: An Appraisal," held at Allerton House on June 11, 1965, is an example. The substance of this paper was first expressed there.

cedural rules surrounding the production of evidence, particularly in the business area. Businessmen want as little disruption of business as possible. Often they forego claims because of the importance of other aspects of business. To conduct their affairs, they rely on evidence of varying degrees of persuasiveness. But when disputes arise, court rules—evidence rules—no longer permit the same kind of evidence to be used, and only very restricted matters of evidence may be produced. The reason for this is that the lawyer has a point of view of trying to protect the jury in its fact-finding function. When the presentation of evidence is discussed, this question is pertinent: "Why should we shift from the point of view of the business community to an artificially constructed point of view of the lawyer and the judge to solve a problem of the business community just because lawyers and judges and juries are now involved?"

Of course, it should not shift, and the whole trend of the rules of admissibility, beginning with the uniform business-records act,[3] points up that it should not. But points of view do shift constantly, and unless committee members are conscious of this a lawyer's point of view will unconsciously be assumed in discussing these problems. After all, they are not the lawyers' problems but those of the litigants. The rules must be to help them.

New Techniques and Devices

2. The second attitude is involved in the terms "new knowledge" or "new techniques" or "new devices."

In discussing advances and possible changes in procedure and in critically examining practice, it is important to hold the discussion and to make the examination in the light of current learning and techniques and in the light of current discoveries and devices. Many of the rules of procedure in use today were developed many years ago. As such, they have stood the test of time and have proved themselves. But we do develop new knowledge. In fact, in the last ten years new information and knowledge have come at such a rate that it is virtually impossible to keep up with them. New devices for doing things become available every day. Sometimes this new knowledge and the new devices undermine procedures developed over a period of time. Sometimes they make the older procedures unnecessary. Our rules must use this new knowledge and the new devices. Lawyers and judges must see that they do.

Where would the trial of cases be today had the skills of the shorthand reporter not been accepted? Or the typewriter as a device? Or the printing press? These techniques and devices brought great changes in court procedure. Lawyers would still be writing out pleadings in longhand and compiling bills of exception from the various handwritten notes made after each exception was taken.

Francis Bacon wrote "crafty men condemn studies, simple men admire them, and wise men use them; for they teach not their own use, but that is a wisdom without them and above them, won by observation." Lawyers and judges have to work at putting the new knowledge gained from studies and the newly developed devices and techniques to work to better procedure in court. They will not do it themselves.

First of all, a catalogue of all new devices and techniques of possible use must be kept, and then efforts must be made to determine if there is a way to put these new devices and techniques to work in improving procedure.

In the same way, sociological or psychological studies should be examined to ascertain what, if any, implications the studies may have on the procedure for trial.

3. Commissioners on Uniform State Laws (1936).

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What about the copying machine? The ease of making verbatim copies at relatively low cost, with virtually no expenditure of time, may have important repercussions on court procedure if these machines are used wisely. In one simple way it could revolutionize the appellate process, cutting lawyer time and costs.

Preparing records on appeal takes substantial lawyer time to cull the record and this is expensive. It costs about three dollars a page to print a record. With a few simple rules we could cut the cost of reproduction by two-thirds and eliminate most of the lawyer time in the preparation of a record through the use of copying machines. The ability to make xerographic copies in a continuous process from microfilms will permit a copy to be made, including all costs, for about 4½ cents a page.[4] In addition, there is a permanent record from which copies can be made at any time for about the same cost. If the rule for the number of copies did not require more than are actually needed for the court and litigants, a full set of copies of the needed portion of a transcript could be made and bound for 4½ cents a page or about one dollar for twenty-four copies. If only ten or twelve copies were made, it would cost about half that much, or 50 cents a page.

An even more drastic proposal might require the court reporter to use a special paper for transcripts which, in turn, could become masters for duplicating very cheaply.

What about the sound recorder? Could not a verbatim record of the judge's instructions be made and taken by the jury to the jury room for them to hear any part of it at any time? It is not inconceivable that a complete verbatim transcript of the whole trial on tape could be made available to the jury so that they could, if they wanted to, re-examine exactly what was said.

Example could be piled on example. Every discovery may have some application to court procedure. Certainly the increase of knowledge of psychiatry and medicine has revolutionized some of the practices. Even closed-circuit television or the computer[5] may be used to improve judicial procedures if efforts are made to use them.

New Knowledge and Information

Let us turn now from new hardware to new knowledge and information.

What should lawyers do with the study "Automobile Accident Costs and Payments"[6] recently published by a number of lawyers, sociologists, and investigators? This study has bushels of facts of real significance to the trial lawyer and to judicial procedure, as well as to the auto-driving public. It does not attempt to draw conclusions, but it is a study for wise men to use to improve a number of bad situations—and it is an extraordinarily good study.

It is simple to demonstrate with a fact or two why the trial lawyer should be interested in this study. The authors have compared the cost of shifting the loss from the injured person to another by means of four different regimes or systems:[7] (1) the liability system as evidenced by our tort law and court cases, workmen's compensation system and employer's liability laws; (2) the private-loss insurance system; (3) the non-occupational disability insurance systems and sick leaves; and (4) public insurance, such as social security.

All these regimes are devices to shift some

4. Correspondence with University Microfilm of Ann Arbor, Michigan, dated February 10, 1965.

5. See the work and reports of the American Bar Association Committee on electronic data retrieval and the American Bar Foundation Advisory Committee on research procedures and techniques.

6. These *Studies in the Economics of Injury Reparation* were made by Alfred F. Conard, James N. Morgan, Robert W. Pratt, Jr., Charles E. Voltz, Robert L. Bombaugh (Ann Arbor: University of Michigan Press [1964], 502 pp.).

7. *Ibid.*, chap. i, pp. 23–74.

of the losses of personal injuries from one person in society to another person or from one group in society to another group. The cost of this loss-shifting has been compared. This includes in its sum total persons who are needed to make a given system work as, for example, judges and lawyers and others in the tort system and the investigators and insurance salesmen and others in the insurance system. The cost of loss-shifting in the tort system is reported to be actually greater than the amount of money received by the injured person; that is, the cost of the attorney fees and the expense of the other persons involved in making this system work involve more money than the amount of money ultimately received by the injured person. In workmen's compensation, the cost is about one-half that received by the injured person; in private insurance, the total cost of shifting the loss is about one-fourth that received by the injured person; and in public insurance it is less than one-tenth of that received by the beneficiary.

These are important facts for the bar to consider, for these facts have a great implication upon whether or not it is wise to continue the detailed investigation of fault in each of the accident cases and whether or not there might be ways other than through the complicated system of negligence law to shift losses from one person to another. It should be obvious, of course, that these facts are not the only facts that should have a bearing on the wisdom of the tort system of reparation, for certainly any decision on this matter should not turn alone on the matter of cost. But these facts should be considered by intelligent lawyers in appraising negligence practice.

This new knowledge must be considered from the point of view of the public as well as from the point of view of lawyers. If the bar does not consider these facts, others will, and they will do so without the considered judgment of lawyers. Civil injury litigation could dry up. Lawyers looking beyond their selfish fee-conscious desires must deal with this new knowledge.

Civil Jury under Attack

In many parts of the country the civil jury itself is under attack as one means of solving the delay problem.[8] This discussion is predicated on new delay statistics. Lawyers have a stake in this discussion, for it deals with procedures and institutions of which lawyers are the guardians. Examination of the place of the civil jury should be more than a regurgitation of historical platitudes. It certainly should involve more than an examination of delay statistics. The author of the book *Civil Justice and the Jury*[9] examines the psychological data that were available at the time and concludes that group discussions by a number of persons and the requirement for near unanimity in their decision were the two things that tended to eliminate bias and prejudice and tended to reduce error in result. Results agreed to after deliberation by a group or, in the case of a jury, their verdict, more closely approached the truth than any possible decision of a single person.[10]

Here were tangible demonstrations of the value of the civil jury and real reasons for its retention. Without this type of "new knowledge," reformers might be overly influenced by some other new information—the delay statistics. The sum total of this new information, the delay statistics, and the proved value of the jury indicates that lawyers, as guardians of fairness and due process, should fight hard to retain the jury but that they should try to

8. As an example, see Judge Charles S. Desmond, "Juries in Civil Cases—Yes or No," *N.Y. St. Bar J.*, XXXVI (April, 1964), p. 104.

9. Charles W. Joiner, *Civil Justice and the Jury* (Englewood Cliffs, N.J.: Prentice-Hall, 1962), 238 pp.

10. *Ibid.*, pp. 25–35.

improve the procedures so as to reduce delay.

The studies in the economics of injury reparation will be used by a number of persons to undermine the civil jury. This will be false use of the material in this study, for it does not deal with the *methods of revolving disputes* but with the even more fundamental question of *the methods of avoiding disputes* in the auto-injury field through a consideration of the elimination of fault as a prerequisite to reparation. This is a different question from that of the value of the jury to decide questions of fault if they are presented. The question really presented by the study is whether the number of cars and the number of accidents and the cost of shifting the loss from the innocent to the guilty have become so great that alternatives must be seriously considered. Such alternatives affect the public, as well as the administration of justice and the lawyers. They may or may not be wise alternatives, but the study does point up the terrific cost of the tort regime of shifting losses and the need for the attention of the best in the bar to lessen these costs, not by a slight cut here and there but in significant amounts.

3. The third attitude essential for procedural appraisal is accented in the words "No one wants to be a radical." Few lawyers wish to be so characterized, yet procedure reform and honest appraisal demand radicals. Each person, if he is to react positively to any of the suggestions of committees and conferences on reform, must risk being so described. Procedural re-examination requires a willingness to challenge verities. For the purpose of examination, at least, it is important that there be a little radicalism.

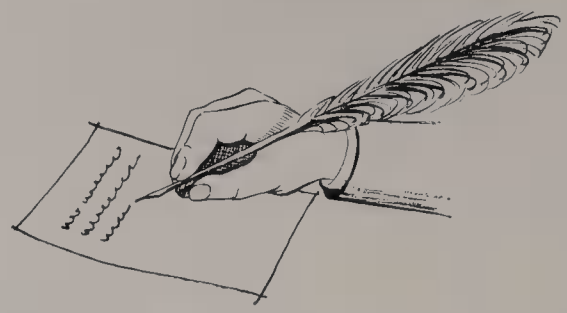
In the field of procedure, the whole procedural process should be examined, step by step. It is important to ask "why" in the light of the litigant's needs and in the light of new experience, or new knowledge, or new devices. This attitude may produce big results as well as little ones.

For example, one possible topic for consideration is the question of note-taking by the jury. In many jurisdictions, note-taking by the jury is forbidden. This is the rule. The reasons for this rule are (1) that note-taking may distract the note-taker so that he will miss something and (2) that it sometimes gives more power to the note-taker in later discussions and this should be avoided. The application of the suggested attitude rules to this question points up that since the development of this rule there has been a substantial amount of new knowledge available that has a bearing upon this matter. The new information is that the persons who are the prospective note-takers—the jury—almost invariably now have gone to high school and many of them to college, that they have had substantial experience in note-taking, and that note-taking has become a relatively accepted way of life for most of them. To deprive them of the opportunity to prepare to decide a case in this way, by taking notes, is to do them a great disservice. This leads to the conclusion that this new knowledge about the kind of jurors, their educational experience, and their experience in connection with note-taking is relevant and might perhaps cause lawyers and judges to change the status quo, radical though they may be.

Thus, in conclusion, if lawyers are to participate effectively in law and procedural examination projects, three special attitudes must be cultivated and developed:

1. Think about the litigant.
2. Make use of all possible new knowledge and new devices.
3. Do not hesitate to challenge the sacred cows.

The Reader's Viewpoint



Salary Survey Put to Good Use

I have just received and immediately reviewed the February issue of the *Journal*, and I wish to express my personal enthusiastic praise and thanks for a task well done. As the report was received in the courthouse by various judges, their reaction was uniformly one of sincere appreciation. The report is timely, and I particularly enjoyed the reference to the personnel standards for court staffs, which is an area that needs great expansion when done again—or perhaps done in a separate survey. Trial court administrators, just as city managers, need such data from a source like the Society when working on salary structures, new employees, and so forth.

For example, we are currently attempting to convince county budgetary authorities of the soundness of employing a recent law graduate to work as a law clerk for the presiding judge to assist him primarily in legal research matters. The analysis on page 167 of your report is the kind of help we need. Although our thinking here indicates a genuine innovation in staffing, your report tells us that it is not unique.

David J. Saari
Court Administrator

546 County Courthouse
Circuit Court of Oregon
Portland 4, Oregon

Thanks for Articles on Lower Courts

I wish to take this opportunity to let you know how much I enjoyed the April issue of the *Journal of the American Judicature Society* with its articles on the lower courts. Judge Harvey Uhlenhopp's article entitled "Some Plain Talk About Courts of Special and Limited Jurisdiction" is the best article that I have ever read pertaining to the upgrading of the lower courts.

I hope that I live to see the day when the "one great court" system is inaugurated in the state of Washington.

Kathryn Ann Mautz, *Judge*

Justice Court of the
County of Spokane for the
District of Spokane
Spokane 1, Washington

Abolishing the Fee System

I note with regret in the February, 1966, issue of the *Journal*, that 2 of our states use the fee system to compensate their probate judges and 15 states, if I have counted correctly, still use the fee system to compensate their justices of the peace. In most states the justices have criminal jurisdiction and civil jurisdiction. (For instance, in Nebraska, a justice of the peace has jurisdiction over criminal cases if the maximum sentence does not exceed a fine of $100 or a jail sentence of 3 months, or both, and in civil cases if the amount in controversy does not exceed $200.) In traffic offenses, quite frequently, a conviction will result in loss of valuable driving privileges, either due to one conviction or to a series of convictions.

The system is vicious from a criminal law standpoint, because the justice must depend

on fees for his income. The apologists for this vicious system are quick to point out that, in the event that the county attorney approves the filing of this complaint, the county board must pay the costs. This is true so far as a single case is concerned, but, generally speaking, to insure future business in the courts, the justice must rule for office B or prosecutor C or the prosecutor's office will file the cases in other justice of the peace courts which are more co-operative. It is quite common to hear police officers criticize county judges (they are not compensated by fees but by salaries fixed by the legislature) for not co-operating, when the court fails to convict, and for advising the defendant of his right to counsel.

The typical justice of the peace is a non-lawyer or some newly admitted lawyer whose income comes, to a large extent, from the fees of his court. Often no lawyer is present in the court, and the judge's sole legal education comes from that of the game warden or state trooper. While common sense may sometimes compensate for a lack of formal legal training, it is difficult for the most conscientious judge, whose future income depends on favorable decisions for the state, to be objective in his decisions. A number of justices and former justices have told me that police officers have quit filing actions with him after unfavorable decisions have been rendered against the officers who filed the actions.

Another serious problem in fee-paid justice cases is the matter of collection agencies. The agency files its suit, and, if an unfavorable decision results, future business is taken elsewhere to a court which will decide in the agency's favor. In fact, contingent fee arrangements are not unknown. The evils mentioned on the criminal side of the docket apply with greater force, since a law enforcement officer in making a complaint is supposedly disinterested but a collection agency or an alleged creditor has no end in view but to collect his claim, regardless of merits.

What are the solutions to this problem? They are simple:

1. In larger cities, where possible, the justice of the peace should be a lawyer and not be permitted to practice law during the term. In smaller places, the justices should be lawyers, where practical, and, of course, should not handle any matters in which his firm is interested.

2. All fees and costs collected by the court should be paid into the public treasury.

3. Adequate salaries which are fixed at regular intervals should be paid the justices for their service, preferably by state statutes.

4. Courtrooms should be maintained at public expense in the city hall or other public building and not in private residences or private property of the justice.

5. All complaints should be processed by the prosecutor's office. Preparation of complaints and argument of legal questions by police officers should be considered unauthorized practice of law and should be dealt with accordingly.

6. Neither the state nor the defendant shall have any voice in the selection of the court, but justices shall be assigned by the order of the local trial court of unlimited jurisdiction.

Roy E. Blixt

Arnold, Nebraska

The Literature  of Judicial Administration

Books Received

Behind Closed Doors: Politics in the Public Interest. By Edward N. Costikyan. New York: Harcourt, Brace & World, Inc., 1966. Pp. xi and 369. $6.95.

Public Law Perspectives on a Private Law Problem: Auto Compensation Plans. By Walter J. Blum and Harry Kalven, Jr. Boston: Little, Brown and Company, 1965. Pp. vii and 88. $2.50, cloth. $1.45, paper.

Prison Profiles. By Mark S. Richmond. New York: Oceana Publications, Inc., 1965. Pp. xvi and 203.

Lawyers in the Making. By Seymour Warkov with Joseph Zelan. Chicago: Aldine Publishing Company and American Bar Foundation, 1965. Pp. vii and 180. $5.00.

Report Concerning the Management Survey of the Courts in Nassau County. New York: Management Services Associates, Inc. July, 1964. Pp. 40. Booklet.

Yesterday's Law and Today's Accidents. By Ella Graubart. Philadelphia: The Boxwood Press, 1963. Pp. viii and 97. Paper.

Specialization in the Medical and Legal Professions. By Glenn Greenwood and Robert F. Frederickson. Mundelein, Illinois: Callaghan & Company, 1964. Pp. x and 210. $5.00.

Unauthorized Practice Source Book (revised ed.). By Stanley A. Bass. Chicago: American Bar Foundation, 1965. Pp. 206. $4.00, paper.

William Lambarde—Elizabethan Jurist. By Wilbur Dunkel. New Brunswick, New Jersey: Rutgers University Press, 1965. Pp. xxiv and 210. $7.50.

Conviction: The Determination of Guilt or Innocence Without Trial. By Frank J. Remington. The Administration of Criminal Justice Series of the American Bar Foundation. Boston: Little, Brown and Company. Pp. xxvii and 259. $8.50.

Pre-Trial: Compromise and Arbitration Procedures. By Guillermo S. Santos, Jose G. Gatchalian, and Mario F. Clutario. Quezon City, Philippines: Phoenix Press, Inc., 1964. Pp. xviii and 341.

Search Warrants and Organized Crime—A Policy Statement. Council of Judges of the National Council on Crime and Delinquency. New York, 1966. Booklet. Pp. 16. 35¢.

The Rise of the Legal Profession in America. By Anton-Hermann Chroust. Norman, Oklahoma: University of Oklahoma Press, 1965. Two volumes, boxed. Pp. 360 and 336. $15.00.

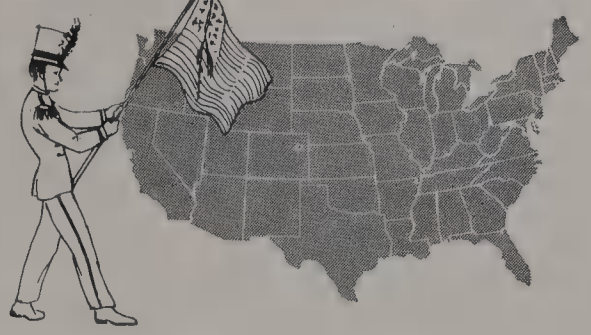
Criminal Procedure Under the Federal Rules. By Lester B. Orfield. San Francisco, California: Bancroft Whitney Company and Rochester, New York: The Lawyers Cooperative Publishing Company, 1966. Six volumes. $27.50 per volume.

Judicial Education in the United States, A Survey. The Institute of Judicial Administration, New York University, New York, 1965. Pp. viii and 276. $2.50, paper.

The Justice of the Peace Today. The Institute of Judicial Administration, New York University, New York, 1965. $2.50, paper.

How to Get Better Government—A Citizens' Guidebook to Action. By H. Eliot Kaplan. Public Affairs Pamphlet No. 383. New York: Public Affairs Committee, Inc., 1966. Pp. 20. 20¢.

The March of Progress



Congress Passes Bill Ending Bail Bond System in Federal Courts

Congress approved reforms in the 175-year-old bail system in June which will permit defendants awaiting trial in federal courts to be released without bond. Under the new bill a defendant charged with a non-capital crime may be released without bond if the judge deems him trustworthy, rather than putting up bond or paying a premium to a bondsman. A judge may now release a defendant into the custody of his lawyer or other approved person.

"Whether a person, released after arrest, is likely to flee before trial or endanger society is not determined by the wealth he commands," President Johnson said in his message to Congress on crime and law enforcement last March, when he requested this legislation. "Yet all too often we imprison men for weeks, months, and even years before we give them their day in court—solely because they cannot afford bail."

Experimental projects conducted in New York, in Washington, and in several other communities have amply demonstrated that discriminating release of arrested persons on their own recognizance can be undertaken with a high degree of reliability. The Washington bail project has recommended releases in 2,456 cases, of which 2,084 were granted. Of those released, 97 per cent have returned for their designated court appearances.

Idaho Citizens' Conference Endorses Court Reform Proposals

General reorganization of the judicial system of Idaho in accordance with a pattern drawn up by the Idaho Legislative Council Committee on Courts was approved by a Citizens' Conference on Idaho Courts which met in Boise June 2, 3 and 4.

The Conference approved a consensus statement endorsing the Legislative Council proposals and offering further recommendations of its own, and it established a temporary steering committee to supervise the organization of a permanent citizens' committee to initiate an action program to help bring about the recommended changes.

The Conference, jointly sponsored by the Idaho State Bar and the American Judicature Society, was the twenty-fourth in a nationwide series of court modernization conferences begun in 1959.

Governor Robert E. Smylie and Chief Justice Joseph McFadden headed the speaking program, which included Robert C. Finley, justice of the Supreme Court of Washington, William H. Burnett, presiding judge of the Denver County Court, William W. Crowdus, St. Louis attorney, Myran H. Schlechte, director of the Idaho Legislative Council, and Glenn R. Winters, executive director of the American Judicature Society.

Thomas A. Miller, Boise, was chairman of the conference committee, and Alfred Gross, Boise, was chosen as chairman of the seven-member steering committee.

Legislation To Upgrade Criminal Hearings Proposed by Senators Tydings and Scott

Major changes in federal law to guarantee criminal suspects prompt hearings before high-grade magistrates were proposed to the Senate in June by Senator Joseph D. Tydings of Maryland and Senator Hugh Scott of Pennsylvania.

Principal revisions of their bill, S. 3475, "Federal Magistrates Act of 1966," are:

1. Replacement of United States commissioners, who now give federal suspects their first judicial hearings, by federal magistrates. Magistrates would be lawyers serving eight-

year terms with a sliding salary scale based on work load. The busiest could earn as much as $22,500 annually.

2. A requirement that magistrates must decide within 10 to 20 days after arrests whether to hold suspects for grand jury or trial. Anybody in jail must be given his hearing within 10 days, but persons released on bail or personal bond might have to wait 20 days. If magistrates failed to hold hearings within time limits, the accused would go free.

The number, location and salaries of magistrates would be determined by the U.S. Judicial Conference, according to the bill. District courts could assign duties to full-time magistrates. In remote areas of the country, part-time magistrates would assume the functions of commissioners at salaries ranging from $300 to $11,000 annually, depending on how busy they were. Deputies could practice law but magistrates could not.

Regional Assemblies Held on "The Courts, the Public and the Law Explosion"

Five regional assemblies following up the Twenty-Seventh American Assembly on "The Courts, the Public and the Law Explosion" have been held in recent weeks. Former Justice W. St. John Garwood of the Supreme Court of Texas and U.S. District Judge Elmo B. Hunter of Kansas City addressed Assemblies at Rice University, Texas, and St. Louis University, Missouri, in May.

Glenn R. Winters, executive director of the American Judicature Society, and Laurance M. Hyde, Jr., dean of the National College of State Trial Judges, were speakers and discussion leaders at an Assembly which was combined with a judicial conference in San Juan, Puerto Rico. Other Assemblies were held at the University of California in Sacramento, and at the University of Oregon.

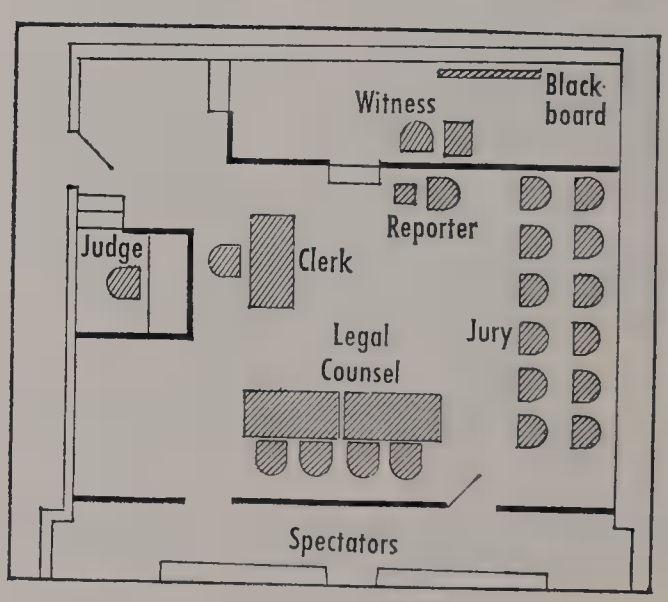
The Texas Assembly adopted a consensus statement repeating and re-emphasizing many of the recommendations of the 1964 Texas Conference on Judicial Selection, Tenure and Administration.

Imperious Justice Shunned by Judge

The "Roman emperor concept" of having a judge glare down from a high bench in front of the courtroom has been rejected for a "functional modern" approach by San Francisco Judge Alvin E. Weinberger.

In the new design the judge's bench, modified, will be at one side of the room. On the opposite side, the jury will be seated in modern swivel chairs instead of the traditional jury box. The emphasis will be up front, where the witness will be on stage. Judge Weinberger feels that the setup will allow both judge and jury a better opportunity to "study a witness's demeanor on the stand."

On the stage will be blackboards and other visual aids as needed in the trial. Weinberger notes that such aids "are in use daily. In the future they will be used more and more. It's an electronic age and courts, like schools, will increase use of films and other aids. . . . Let's have a new arrangement for a new era."



Gallup Poll Reveals Public Favors Divorce of Politics and Bench

Left to the American public, political considerations would be removed from the selection of federal judges. In a recent Gallup poll, a cross-section sample of the nation was asked, "Political considerations as well as ability enter into the selection of United States Supreme Court Justices and other federal judges. To reduce political factors, it has been suggested that the American Bar Association draw up a list of candidates that they approve and let the President choose one of these. Does this sound like a good idea or a poor idea to you?"

The results were: good idea, 61 per cent; poor idea, 22 per cent; no opinion, 17 per cent. Persons with a high school education were less inclined to support the idea than college- or high-school-trained persons.

Since Grover Cleveland's administration, no president has made fewer than 82 per cent of his judicial appointments from the ranks of his own party, the *ABA Journal* reports.

Broader Disciplinary Power over California's Judges Sought by Commission

Increased disciplinary powers over California's 935 judges have been requested by the Commission on Judicial Qualifications in its annual report. The group urged legislation granting it the power to:

1. Recommend that a judge be merely censured, thus permitting disciplinary action short of removal;
2. Discipline for an offense occurring up to six years prior to the current term;
3. Extend judicial misconduct beyond the course of judicial duties to include "conduct prejudicial to the administration of justice, bringing the judicial office into disrepute";

Calendar of Conferences, Seminars and Assemblies

This calendar lists dates and places of citizens' conferences on the courts definitely scheduled during the coming months under co-sponsorship of the American Judicature Society. The second group includes judicial seminars scheduled by the National College of State Trial Judges, and the third lists regional assemblies of the American Assembly scheduled as follow-up to the 1965 Arden House assembly on "The Courts, the Public and the Law Explosion."

Citizens' Conferences

Citizens' Advisory Conference on Idaho Courts Boise, Idaho	June 2–4
Minnesota Citizens' Conference on Courts Minneapolis, Minnesota	September 8–10
North Dakota Follow-up Conference Minot, North Dakota	September 17
Citizens' Conference on Wyoming Courts Laramie, Wyoming	September 22–24
Citizens' Conference on the Montana Judicial System Great Falls, Montana	September 29–30, October 1
Washington Citizens' Conference on Courts*	November 10–12
Utah Citizens' Conference on Courts Salt Lake City, Utah	November 17–19
Citizens' Conference on Alabama State Courts Montgomery, Alabama	December 1–3

Trial Judges' Seminars

Missouri	Kansas City	June 2–4
Tennessee	Chattanooga	June 8–11
Nebraska	Omaha	June 15–17
Oregon	Cottage Grove	June 23–24
North Carolina	Myrtle Beach, *South* Carolina	June 26–29
Idaho	Boise	July 5–7
Washington	Yakima	August 24–25
North and South Dakota	Bismarck	September 2–3*
Minnesota	(to be determined)	September 9–11*
California	Anaheim	September 17–19
Louisiana	New Orleans	October 3–4
Hawaii	Honolulu	October 13–15
Arkansas	Hot Springs	October 21–22
Georgia	Athens	November 2–5

Regional Assemblies

University of Oregon	June 12–15
University of California (Davis) In Sacramento, California	June 16–19

* Tentative.

4. Make ineligible for judicial office any judge once removed from office;

5. Disqualify any judge facing proceedings before the commission from acting in a judicial capacity (without loss of salary), allowing his return only after he has been cleared.

The proposed legislation has been indorsed by the Constitution Revision Commission.

New rules of civil procedure, approved by the United States Supreme Court and now pending before Congress, are designed to cure a number of irksome problems resulting from ambiguities or glosses in the present rules; produce an amalgamation, or merger, of civil and admiralty practice; provide for a complete new joinder of party; and provide a new class-action rule.

A Clients' Security Trust Fund has been set up by the Maryland Court of Appeals, effective July 1, which will require every practicing lawyer in the state to contribute an amount not to exceed $20 to indemnify clients against losses due to defalcations of lawyers. Payment of the annual fee will be a condition precedent to active law practice in Maryland. A board of seven trustees is empowered to determine to what extent losses of clients will be reimbursed out of the fund.

Hundreds of thousands of French motorists have been relieved of traffic tickets and fines issued before January 1 by an amnesty bill, a move of the French government in an attempt to clear a backlog of cases that has swamped traffic courts.

The jury-selection system in New York City has been challenged as unconstitutional in a lawsuit filed in the State Supreme Court on the grounds that it systematically excludes Negroes and Puerto Ricans from jury service. Mr. Nathan Straus instituted the suit to correct what he called a "Mississippi-like" scheme of discrimination which he blames on the state judiciary law that requires, among other things, that a juror be "intelligent," "well informed," and have real or personal property worth at least $250. He assailed the money requirement as a "poll tax" and contended that the intelligence qualification was arbitrary.

The House has passed H.R. 8188, a bill making contributions to nonprofit organizations promoting judicial reform tax deductible for two years. The measure would limit the deductions to gifts made in 1966 and 1967 to nonprofit groups working for judicial reorganization through constitutional amendments.

The justice of the peace office was voted out of existence in Wisconsin by a recent referendum amending the state constitution. "Population changes and the 1961 state-wide court reorganization made the justice an obsolete, useless appendage to the state's judicial system," said Donald C. O'Melia, president of the State Bar of Wisconsin. The Amendment will not affect the established municipal courts, which will retain jurisdiction over municipal ordinance violations.

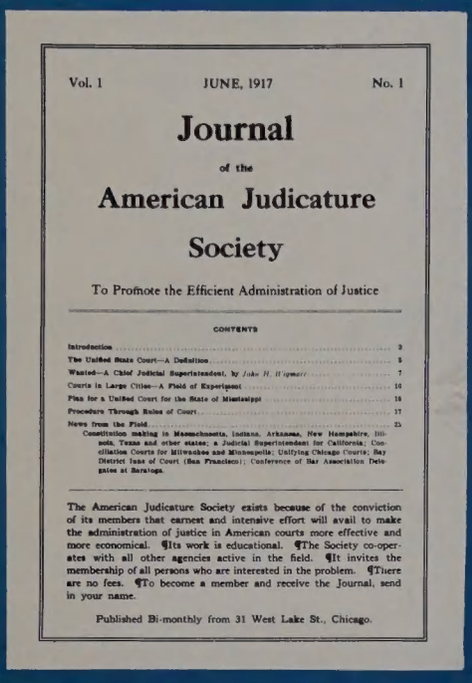
Pre-trial settlements have been obtained in 28 per cent of the 4,387 cases assigned to volunteer masters by New York County Civil Court judges. The year-old master plan to reduce the backlog of auto negligence cases "has exceeded our fondest hopes," reports presiding Justice Bernard E. Botein of the Appellate Division. Under the program, about 150 trial lawyers and a like number of insurance adjusters serve in two-man teams without compensation, contributing one afternoon a month. The program will be extended to the Bronx in September and to Brooklyn six months later.

The American Judicature Society

TO PROMOTE
THE EFFICIENT ADMINISTRATION OF JUSTICE

Founded in 1913 by Herbert Lincoln Harley
1155 E. Sixtieth St.—Chicago, Illinois 60637

JUDICATURE... *Then and Now*



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Journal

of the

American Judicature Society

To Promote the Efficient Administration of Justice

CONTENTS

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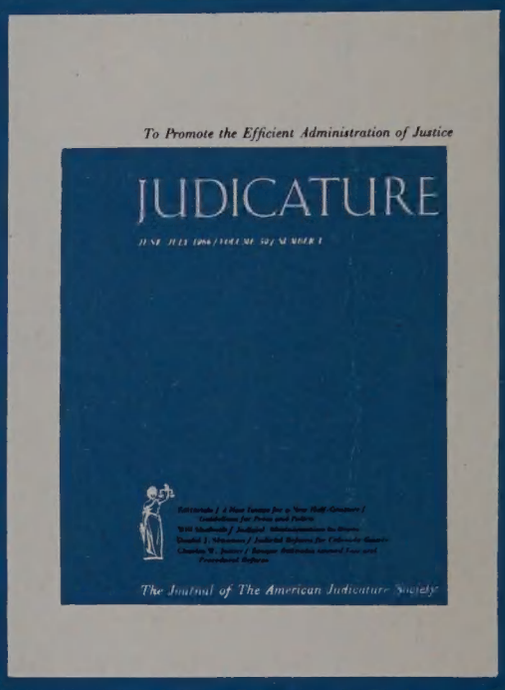

To Promote the Efficient Administration of Justice

JUDICATURE

The Journal of The American Judicature Society

Volume 50, No. 1

Although the type and format of the first issue seem quaint and old-fashioned compared to the new Fiftieth Anniversary design, each expresses the spirit of its age and each reflects a strength and formal dignity commensurate with the aims of the American Judicature Society.